

## MORTGAGES ON UNPLANTED CROPS.—LAW SOCIETY.

tract is to deliver out and from a specific crop, much more so will an assignment be enforced when identity is made the easier by the assignment being of *all* and not a *portion*. If it be lawful to relieve against an agreement to "sell what will be and may be called specific things" when its performance becomes impossible, then when possible it is surely lawful to enforce an agreement "to sell what will be and may be called specific things," and if relief is granted upon a condition implied, (*Melish L. J. Howell v. Coupland, supra* at p. 262), surely performance will be decreed upon a condition expressed. In a mortgage of crops to be thereafter sown identity can be made complete, and it was the identity that gave the regent potato its specific character, and identity that upheld such a mortgage when contested in a County Court case (*McIlhargy v. Martin*, per Dean Co. J.). If then, specific performance of such an assignment would be enforced in equity, then on the authority of some of the cases we have referred to, such an assignment would be upheld in law, and the rights of a mortgagee of after-sown crops preferred to those of creditors, subsequent purchasers and mortgagees in good faith.

The English cases of *Brantom v. Griffiths*, L. R. 1 C. P. D.; 2 C. P. D. 212, overruling *Sheridan v. McCartney*, 11 Ir. C. L. (N. S.) 506, and *Ex parte Payne, in re Cross*, have not escaped us. These cases merely except such mortgages as we are discussing from the operation of the Imperial Bills of Sale Act on reasoning that does not apply to make them bad at Common Law. The term "personal chattel" in this statute is given a statutory definition; namely, to such chattels as are capable of a *present complete delivery*. Hence growing crops cannot be within the Imperial Act. It may be observed that the words in our statute are not unsimilar in effect to the statutory definition of the Imperial words, but our statute has reference to the property, not so much when the mortgage is executed, as when

the mortgagee insists upon his charge (*Blake V. C.*, in *Perrin v. Wood, supra*, at p. 509).

Then, if a mortgage of crops to be planted and produced is good, to what extent, in point of time, will such a mortgage be upheld? We find at law that a period of seven years did not prejudice a grant of that which had a potential existence at the time of the grant (*Perkins, tit. Grants, §90*). Will not the specific nature of a chattel do as much through equity as the potential existence of property did through law? A comparison of power between equity and law indicates the affirmative, though if *O'Neill v. Small et al.* 15 C. L. J. 114, be good law the defeazance clause would prevent the likelihood of such a mortgage being ever executed. Policy sometimes, however, does make the law, and though this is a dangerous element, sound politic reasons could be advanced in favour of limiting a period beyond which mortgages of future acquired property or crops to be afterwards sown should be illegal and void, if already they are not so, as they so far appear not to be.

J.A.B.

## LAW SOCIETY—EASTER TERM.

The following is the *resume* of the proceedings of Convocation, published by authority:

May 16, 1881.

*Present*.—Messrs. Blake, Read, Crickmore, Martin, Pardee, Mackelcan, Moss, J. F. Smith, T. M. Benson, J. MacLennan, Foy, Meredith, Hoskin, Bell, Bethune, Murray, Glass, Hardy, J. H. Ferguson, Kerr, Britton, Irving, Robertson, T. Ferguson, H. Cameron, A. Lemon, L. W. Smith, McMichael.

On motion of Mr. Crickmore, seconded by Mr. Martin, Mr. Blake took the chair.

The Secretary read the report of the scrutineers, and declared the following persons to be duly elected Benchers of the Law Society, namely, W. R. Meredith, D. McCarthy, J. Bethune, D. B. Read, Thos. Ferguson, D. McMichael, F. Mackelcan, J. MacLennan, J. Hoskin, C. Moss, T. M. Benson, Thos. Robertson, J. K. Kerr, H. Cameron, Æ. Irving, B. M. Britton, J. Bell, A. S. Hardy, J. J. Foy, H. W.